

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8062 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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JABUBEN W/O. AMRAT RAMA

VADU VAGHRI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

MR AB VYAS, AGP, for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/02/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the detenu Jasuben w/o Amrat Rama who is detained pursuant to the order of detention dated 24-8-1998 passed by the Commissioner of Police, Ahmedabad under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act") has challenged the same .

In the grounds of detention supplied to the detenu, the detaining authority has relied upon four prohibition cases filed against the detenu in the year 1998 of which the investigation is going on. The detaining authority has also relied upon the statements of two witnesses recorded in relation to the incidents dated 25-7-98 and 7-8-98 whose identity was not disclosed to the petitioner claiming privilege under Section 9(2) of the Act.

As regards the incident of 25-7-98, it is alleged that as the witness did not permit the petitioner to store illicit liquor in the house of the witness, the petitioner gave threat to the witness of beating him and when the witness was passing by the Shahpur Petrol Pump, the witness was detained and beaten.

On 7-8-98, the witness was beaten on the ground that he was informant of the police.

On both the occasions people gathered and when the petitioner and his associates rushed towards them, people started running helter skelter with the result an atmosphere of fear and terror was created and the even tempo of life was disturbed. On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a "boot legger" within the meaning of Section 2 (b) of the Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain the detenu and therefore the impugned order of detention came to be passed against him.

Having gone through their statements of the witnesses very minutely, I am of the opinion that the statements of the witnesses are too general and vague. Even if the allegations made against the petitioner are believed, they would not constitute breach of public order. At the most the same can constitute breach of law and order situation. Since the statements of the witnesses are general in nature and they are stereotype and on the basis of the same branding the petitioner as a bootlegger is not proper. In similar set of circumstances the Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any

feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 24-8-98 is quashed and set aside. The detenu Jasuben w/o Amrat Rama is ordered to be set at liberty forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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